

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 676
Judiciary

(Delegate Parrott, *et al.*)

Criminal Law - Trespass With Intent to Commit Theft of Package

This bill prohibits a person from entering or trespassing on the property of another with the intent to commit theft of a package delivery. Violators are guilty of a felony, punishable by imprisonment for up to three years and/or a \$50,000 maximum fine. The bill also prohibits a person from entering or trespassing on the property of another with the intent to commit theft of a package delivered by the U.S. Postal Service. Violators are guilty of a felony, punishable by imprisonment for up to six years and/or a \$100,000 maximum fine.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues from fines imposed in the District Court. Potential minimal increase in general fund expenditures due to the bill's incarceration penalties.

Local Effect: Potential minimal increase in local revenues from fines imposed in the circuit courts. Potential minimal increase in local expenditures due to the bill's incarceration penalties.

Small Business Effect: None.

Analysis

Current Law:

General Theft

A person may not, under specified circumstances, (1) willfully or knowingly obtain or exert unauthorized control over property; (2) obtain control over property by willfully or knowingly using deception; (3) possess stolen property knowing that it has been stolen or

believing that it probably has been stolen; or (4) obtain control over property knowing that the property was lost, mislaid, or delivered under a mistake as to the identity of the recipient or nature or amount of the property. A violator is required to restore the owner’s property or pay the owner the value of the property or services and is subject to the penalties listed below:

Value of Property and/or Services

Maximum Penalty

Less than \$100

Misdemeanor – 90 days imprisonment and/or \$500 fine

At least \$100 but less than \$1,500

Misdemeanor – 6 months imprisonment and/or \$500 fine (first conviction) or 1 year imprisonment and/or \$500 (second or subsequent conviction)

Less than \$1,500 (four or more prior convictions)

Misdemeanor – 5 years imprisonment and/or \$5,000 fine

Between \$1,500 and \$25,000

Felony – 5 years imprisonment and/or \$10,000 fine

Between \$25,000 and \$100,000

Felony – 10 years imprisonment and/or \$15,000 fine

\$100,000 or more

Felony – 20 years imprisonment and/or \$25,000 fine

Under the general theft statute, “property of another” means property in which a person other than the offender has an interest that the offender does not have the authority to defeat or impair, even though the offender also may have an interest in the property. While “property of another” is not a term that is mentioned frequently under the general theft statute, it is a component of the statute’s definition of “deprive,” which is repeatedly mentioned.

To “deprive” under the general theft statute means to withhold property of another (1) permanently; (2) for a period that results in the appropriation of a part of the property’s value; (3) with the purpose to restore it only on payment of a reward or other compensation; or (4) to dispose of the property or use or deal with the property in a manner that makes it unlikely that the owner will recover it.

Engaging in specified behavior that intends to deprive an owner of property, deprives an owner of property, or probably will deprive an owner of property constitutes unauthorized control over property or possessing stolen personal property under the general theft statute. The intention to deprive the owner permanently of the use or benefit of property that was lost, mislaid, or delivered by mistake is also a feature of the general theft statute.

It is not a defense to the crime of theft that the defendant has an interest in the property that was the subject of the theft if another person also has an interest in or right to possess the property that the defendant is not entitled to infringe. In determining the right of possession, (1) a joint or common owner of the property does not have a right of possession of the property that is superior to the right of any other joint or common owner of the property and, (2) in the absence of a contrary agreement, a person in lawful possession of the property has a right of possession superior to the right of possession of a person who has only a security interest in the property, even if legal title to the property lies with the holder of the security interest under a conditional sale contract or other security agreement.

However, it is a defense to the crime of theft that (1) the defendant acted under a good faith claim of right to the property involved; (2) the defendant acted in the honest belief that the defendant had the right to obtain or exert control over the property as the defendant did; (3) the property involved was that of the defendant's spouse, unless the defendant and the defendant's spouse were not living together as husband and wife and were living in separate residences at the time of the alleged theft; or (4) in a case of theft of a trade secret, the defendant rightfully knew the trade secret, or the trade secret was available to the defendant from a source other than the owner.

Federal Mail Theft

Under federal law (18 U.S.C. § 1708), mail theft is a felony, punishable by imprisonment for up to five years and/or a \$250,000 maximum fine. The law applies to letters, packages, and other types of material.

Trespass on Posted Property

A person may not enter or trespass on property that is posted conspicuously against trespass by (1) signs placed where they reasonably may be seen or (2) paint marks meeting specified criteria. Violators are guilty of a misdemeanor, punishable by (1) imprisonment for up to 90 days and/or a \$500 maximum fine for a first violation; (2) imprisonment for up to six months and/or a \$1,000 maximum fine for a second violation occurring within two years after the first violation; and (3) imprisonment for up to one year and/or a \$2,500 maximum fine for each subsequent violation occurring within two years after the preceding violation.

Wanton Trespass on Private Property

A person may not enter or cross over private property or board the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so, unless entering or crossing under a good faith claim of right or ownership. A person is

also prohibited from remaining on private property, including the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so. Violators are guilty of a misdemeanor, punishable by (1) imprisonment for up to 90 days and/or a \$500 maximum fine for a first violation; (2) imprisonment for up to six months and/or a maximum fine of \$1,000 for a second violation occurring within two years after the first violation; and (3) imprisonment for up to one year and/or a \$2,500 maximum fine for each subsequent violation occurring within two years after the preceding violation.

Background: According to *The New York Times*, the United Parcel Service planned to deliver 750 million packages during the 2017 holiday season, an increase of 250 million from five years before. With the growth of online shopping, opportunities for the theft of packages delivered to homes and public awareness of the problem has grown. Frustrated shoppers have resorted to surveillance systems and video doorbells to catch these thieves, also known as "porch pirates." Several news reports describe confrontations between homeowners and thieves.

The Division of Parole and Probation advises that it conducted the following intakes during fiscal 2017:

- 1,213 intakes for individuals sentenced to probation for misdemeanor theft;
- 3,356 intakes for individuals sentenced to probation for felony theft; and
- 278 intakes for individuals sentenced to probation for trespass.

State/Local Fiscal Effect: Should individuals be charged, convicted, and sentenced for the offenses established under this bill instead of traditional theft offenses, then the bill may result in (1) a shifting of cases and fine revenues from the District Court to the circuit courts; (2) an increase in general fund expenditures for the Department of Public Safety and Correctional Services if more people are sentenced to State correctional facilities as a result of the bill; and (3) an increase in local expenditures if individuals spend longer amounts of time in local detention facilities as a result of the bill.

However, the Department of Legislative Services advises that individuals charged with the offenses established under this bill are likely to face traditional theft charges as well and will likely be sentenced for those offenses instead of the offenses established under the bill. This estimate assumes that most of the cases affected by the bill involve property valued at less than \$1,500.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Garrett, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; National Public Radio; *New York Times*; Department of Legislative Services

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